## REMARKS

Claims 1-3, 11, 22, 23,33, 34, 43-46 and 49 are pending in this application. Claims 4-10, 12-21, 24-32, 35-42, 47 and 48 have been withdrawn by the Examiner as being drawn to a non-elected invention.

At pages 1-4 of the Office Action, the specification has been objected to and claims 1-3, 11, 22-23, 33-34, 43-46 and 49 have been rejected under 35 U.S.C. § 112, first paragraph because of lack of enablement. At page 3 of the Office Action, claims 1-3, 11, 22-23, 33-34, 43-46 and 49 have been rejected under 35 U.S.C. § 112, second paragraph for indefiniteness. For brevity, reference is made to pages 1-4 of the Office Action for the complete reasons for rejection.

While Applicants respectfully disagree with and traverse these rejections, claims 1 and 49 have been amended to specify compounds of formula (I) as sterol absorption inhibitors and that the cardiovascular agent is selected from the group consisting of channel blockers, adrenergic blockers, adrenergic stimulants, angiotensin-converting enzyme (ACE) inhibitors, antihypertensive agents, angiotensin II receptor antagonists, anti-anginal agents, coronary vasodilators, diuretics and combinations thereof, to expedite allowance of the present application, without prejudice to filing of one or more patent applications directed to the amended or canceled subject matter thereof. Claim 11 has been canceled.

Accordingly, Applicants respectfully request that the rejection of the specification and claims 1-3, 11, 22-23, 33-34, 43-46 and 49 under 35 U.S.C. § 112 be reconsidered and withdrawn.

At pages 4-6 of the Office Action, claims 1-3, 11, 22-23, 33-34 and 49 have been rejected under 35 U.S.C. §103(a) as obvious over US 5,846,966 ("Rosenblum et al.") and Chobanian et al. For brevity, the reasons for rejection are not repeated herein but reference is made to the outstanding Office Action.

Applicants respectfully traverse this rejection and request that the rejection be reconsidered and withdrawn.

When making a rejection under 35 U.S.C. § 103, the Examiner has the burden of establishing a prima facie case of obviousness. In re Fritch, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The Examiner can satisfy this burden only by showing an objective teaching in the prior art, or knowledge generally available to one of ordinary skill in the art, which would lead an individual to combine the relevant teachings of the references [and/or the knowledge] in the manner suggested by the Examiner. Id.; In re Fine, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

The mere fact that the prior art could be modified does not make the modification obvious unless the prior art suggests the desirability of the modification. In re Fritch, 23 U.S.P.Q.2d at 1784; In re Laskowski, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989); In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984).

"It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious....'[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'" In re Fritch, 23 U.S.P.Q.2d at 1784 (quoting In re Fine, 5 U.S.P.Q.2d at 1600).

"The ultimate determination of patentability must be based on consideration of the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence." Manual of Patent Examining Procedure, (Rev. 1, Feb. 2003) § 716.01(d) and In re Oetiker, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

Rosenblum et al. do not suggest or disclose a combination of a compound of formula (I) with a cardiovascular agent selected from the group consisting of channel blockers, adrenergic blockers, adrenergic stimulants, angiotensin-converting enzyme (ACE) inhibitors, antihypertensive agents, angiotensin II receptor antagonists, anti-anginal agents, coronary vasodilators, diuretics and combinations thereof. Chobanian et al. discloses that captopril can be useful for treating atherosclerosis. Chobanian et al. therefore teaches away from the concept of use of two separate compounds (a compound of formula (I) and a separate cardiovascular agent as claimed) because captopril would serve both functions as an antihypertensive and treatment for atherosclerosis. Therefore, one skilled in the art would not be motivated by the teachings of Rosenblum et al. and Chobanian et al., as combined in the Office Action, to provide a compound of formula (I) and a separate cardiovascular agent as presently claimed.

Applicant respectfully asserts that the rejection is based upon improper hindsight reconstruction and respectfully requests that the rejection of claims 1-3, 11, 22-23, 33-34 and 49 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Applicants respectfully request that the Examiner return an initialed PTO-1449 form for the Information Disclosure Statement submitted herewith, indicating that the Examiner has considered each of the references cited in the Information Disclosure Statements filed on August 26, 2003 (electronically filed as EFS # 17381, 17382 and

17383), August 23, 2003 (electronically filed as EFS # 17330), August 21, 2003 (electronically filed as EFS # 17236 and 17267), April 14, 2003, April 28, 2003, June 5, 2003 and April 16, 2004.

In view of the foregoing remarks, it is respectfully submitted that all of the pending claims in the present application comply with the requirements of 35 U.S.C. § 112 and are distinguishable from the cited prior art. Accordingly, reconsideration and withdrawal of the objection and rejections and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

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